

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218047.2

DATE: March 11, 1985

MATTER OF: Joseph B. Evans--Request for
Reconsideration

DIGEST:

GAO will not consider the protest by a government employee of the type of contract an agency intends to use in soliciting bids for services which may be contracted out, since the protester is not an interested party under GAO's Bid Protest Regulations.

Joseph B. Evans has requested that we reconsider our dismissal of his protest (B-218047, Jan. 23, 1985) that the Department of the Army, Fort Polk, Louisiana, was soliciting proposals on a cost-plus-award-fee, rather than on a firm-fixed-price basis in conjunction with a commercial activities study. The protester stated that he is "a current government employee whose job is on the line" should the Army decide to contract out certain services if warranted by the solicitation results. His protest was dismissed on the basis that he is not an interested party within the meaning of our Bid Protest Regulations. 49 Fed. Reg. 49,417 et seq. (1984).

Under our regulations, in order for a protest to be considered by this Office, it must have been filed by an interested party, which is:

"... an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." 49 Fed. Reg. 49,419.

In his request for reconsideration, Mr. Evans claims he is a "prospective offeror" to the solicitation, and therefore an "interested party" as defined in our regulations, because he is a "directly affected party" as defined in paragraph 6(g) of Office of Management and Budget (OMB) Circular No. A-76, Aug. 4, 1983, reprinted in 48 Fed. Reg. 37,111, 37,113 (1983), which states:

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"(g) Directly affected parties are Federal employees and their representative organizations and bidders or offerors on the instant solicitation."

The term "directly affected party" is defined in OMB Circ. No. A-76 in connection with the application of procedures set forth in the OMB Circ. No. A-76, supplement, "Performance of Commercial Activities" (1983), for appeals of cost comparison decisions made by an agency under that authority. See OMB Circ. No. A-76, supplement, part I, ch. 2, para. I. Under those procedures, "directly affected parties" have a right of appeal for the resolution of questions pertaining to an agency's (1) determinations resulting from cost comparisons performed in compliance with OMB Circ. No. A-76 and the supplement, and (2) justifications to convert to contract without a cost comparison in accordance with certain provisions of the supplement. These appeal procedures provided for "directly affected parties" do not apply to questions concerning government management decisions, nor do they authorize appeals outside the contracting agency, OMB Circ. No. A-76, supplement, part I, ch. 2, paras. I-1 and 2.

Mr. Evans' protest pertains to the agency's decision concerning the type of contract to be required under the proposed solicitation. The protest does not involve the kind of questions that are to be resolved through the appeal procedures authorized by part I, ch. 2, para. I of the OMB Circ. No. A-76 Supplement. Therefore, it would appear that Mr. Evans' status as a "directly affected party" under OMB Circ. No. A-76 appeal procedures has no relevance to his challenge to the agency decision. Moreover, since the OMB Circ. No. A-76 appeal procedures do not authorize a judicial review or an appeal outside the contracting agency, they obviously do not authorize an "appeal" or protest by an agency employee to our Office under our protest regulations.

Apart from consideration of Mr. Evans' protest on the basis he has stated, we note that our Office generally has declined to review agency decisions under OMB Circ. No. A-76 to contract for services rather than perform work in-house, and we have limited our consideration to situations where the agency utilizes the procurement system and it is alleged that there were improprieties in the cost comparison of the in-house estimate with the bids received.

See National Association of Government Employees, Local R5-87, B-212735.2, Dec. 29, 1983, 84-1 C.P.D. ¶ 37; American Federation of Government Employees, Local 1954, B-207359.2, Oct. 7, 1982, 82-2 C.P.D. ¶ 315. Even our review of those cases, however, does not extend to federal employees or nonbidders. Federal Employees Metal Trades Council, Save Our Jobs Committee, B-218113, Feb. 6, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ _____.

Accordingly, we do not consider the protester an interested party with respect to the subject matter of his protest. Therefore, we affirm the prior dismissal.

for Seymour E. Van Cleve
for Harry R. Van Cleve
General Counsel